

ORDINANCE NUMBER O-_____ (NEW SERIES)

DATE OF FINAL PASSAGE _____

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 5, ARTICLE 4 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION 8 TITLED PLASTIC AND PAPER BAG REDUCTION AND BY ADDING SECTIONS 54.0801 THROUGH 54.0804 ALL RELATING TO PLASTIC AND PAPER BAG REDUCTION.

WHEREAS, every year, Americans dispose of an estimated 100 billion plastic carryout bags that end up in storm drains, landfills, and litter on land and in water; and

WHEREAS, in 2006, the California Integrated Waste Management Board [CIWMB] estimated that Californians' plastic retail carryout bag use has increased to 20 billion per year; and

WHEREAS, the California Coastal Commission has documented a giant trash "island" floating approximately 1,000 miles off the coast of California that weighs 3.5 million tons, is 80% plastic, and has been growing tenfold every decade since the 1950's; and

WHEREAS, most of the plastic trash that is now polluting the ocean actually originates onshore; and

WHEREAS, many animals mistake plastic carryout bags for food—once plastic bags enter their stomachs, the bags may remain there resulting in starvation and death; and

WHEREAS, plastic bags do not bio-degrade; rather, they photo-degrade into smaller and smaller bits of plastic, and the plastic pieces and particles are not digestible by animals; and

WHEREAS, in the ocean, the small plastic pieces accumulate bacteria, pesticides, and other toxins which may be transferred to the marine animals that ingest them; this bioaccumulation of toxins travels up the food chain and may endanger human health; and

WHEREAS, over 1 million sea birds and 100,000 turtles, whales, seals, and other marine mammals die from ingesting or becoming entangled with plastic carryout bags each year; and

WHEREAS, plastic bags and marine debris effect at least 267 marine species, including but not limited to, 86% of all sea turtle species, 44% of all seas bird species, and 43% of all marine mammal species; and

WHEREAS, plastic bags take at least 15 years to breakdown, so when animals die with plastic bags in their stomachs, once they decay, the plastic re-enters the environment and continues to threaten other wildlife; and

WHEREAS, on land, plastic bags block storm drains, trap birds, and kill livestock; and

WHEREAS, a 2004 study conducted by the city of Los Angeles revealed that plastic bags made up 25 percent of the litter cleaned from 30 storm drain catch basins; and

WHEREAS, plastic carryout bags are recyclable; however, very few are actually recycled. Large grocery chains have provided recycling containers for plastic bags since the early 1990's, yet the current rate of recycling is less than 5 percent; and

WHEREAS, compostable plastic bags are not accepted in the City of San Diego's recycling program; and

WHEREAS, compostable plastics are incompatible with the regular plastic bag recycling process and are a problem because they are easily mistaken for regular plastic bags and contaminate non-compostable plastic recycling programs; and

WHEREAS, like non-compostable plastic bags, compostable plastic bags are designed for single use and are likely to become litter on land and in water;

WHEREAS, Public Resources Code section 41730 et seq. requires the City of San Diego to reduce waste that enters the landfills to 50% of the 1990 base year tonnage levels (50% diversion rate); and

WHEREAS, there are three landfills in the urbanized region of San Diego available for waste disposal, the West Miramar Landfill, the Sycamore Landfill, and the Otay Landfill; and

WHEREAS, the West Miramar Landfill is estimated to close as early as December of 2011, the Sycamore Landfill is estimated to close as early as January of 2016, and the Otay Landfill is estimated to close in 2027; and

WHEREAS, plastic and paper bag reduction measures would assist the City in meeting its diversion rate goals and increasing the life of the landfills; and

WHEREAS, a 2002 Australian study found that compostable plastic bags and non-compostable plastic bags produced similar greenhouse gas emissions; and

WHEREAS, recycled content paper bags made from 40 percent post-consumer and 60 percent post-industrial paper are readily available for stores to stock as carryout bags, which supports the curbside collection of paper; and

WHEREAS, the ultimate goal is not to have people deciding between paper or plastic, but to use reusable bags; and

WHEREAS, one reusable bag replaces hundreds of single-use bags, requires only slightly more energy to produce, and is unlikely to become land litter or marine debris; and

WHEREAS, in 2002, Ireland implemented of a fee for the provision of plastic carryout bags that resulted in an approximate 90% reduction in plastic bags in the first year of the fee;

WHEREAS, this ordinance is exempt from environmental review under the California Environmental Quality Act [CEQA] pursuant to CEQA Guidelines section 15308 [Class 8 exemption] because this is an action taken by a regulatory agency for the protection of the environment; and

WHEREAS, the Council of the City of San Diego has considered the potential exceptions to the Class 8 exemption as set forth in CEQA Guidelines section 15003.2 and determined that no substantial evidence has been presented to support the application of any exception; and

WHEREAS, based upon all the studies, facts, documents, and testimony provided prior to and at the noticed public hearing held on _____, the Council of the City of San Diego finds that prohibiting plastic carry out bags and imposing a fee for paper bags provided by certain stores protects the public health, safety, and general welfare; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That Chapter 5, Article 4 of the San Diego Municipal Code be and the same is hereby amended by adding Division 8 titled Plastic and Paper Bag Reduction and by adding Sections 54.0801 through 54.0805 to read as follows:

DIVISION 8

PLASTIC AND PAPER BAG REDUCTION

§54.0801 Purpose of Regulations Relating to Plastic and Paper Bag Reduction

It is the purpose of Division 8 to protect the public health, safety, and welfare of the citizens of San Diego by reducing single-use plastic and paper bags that would otherwise fill our landfills, litter the City's landscape and waterways, and endanger the health of humans, fish, and wildlife.

§54.0802 Definitions

Except as otherwise provided, for the purposes of this division:

“*Paper carryout bag*” means one that is provided to a customer by a *supermarket* or *pharmacy* at the point of sale and that meets all of the following requirements:

1) contains no old growth fiber; 2) contains a minimum of 40% post-consumer or 60% post-industrial recycled content; 3) is 100% recyclable; and 4) displays the words “Reusable” and “Recyclable” in a highly visible manner on the outside of the bag.

“*Plastic carryout bag*” means a compostable or non-compostable plastic bag provided by a *supermarket* or *pharmacy* to a customer at the point of sale.

“*Pharmacy*” means a retail pharmacy with at least five locations under the same ownership within the City of San Diego.

“*Reusable bag*” means a bag with handles that is designed and manufactured for multiple reuse and that is either cloth or durable plastic (at least 2.25 millimeters thick).

“*Supermarket*” means a full-line, self-service retail establishment that sells a line of dry grocery, canned goods, or nonfood items and some perishable items and that generates gross annual sales of two million dollars or more. For the purposes of determining which retail establishments meet the definition of a *supermarket*, the Progressive Grocer Marketing Guidebook (as annually updated) and any associated printed materials shall be used as the basis for the determination.

§54.0803 Regulations on the Provision of Plastic and Paper Carryout Bags

- (a) Owners of *supermarkets* and *pharmacies* are prohibited from providing *plastic carryout bags* to any customer at the point of sale.
- (b) Owners of *supermarkets* and *pharmacies* shall provide or sell *reusable bags* and may provide or sell *paper carryout bags* to customers at the point of sale.

§54.0804 Paper Carryout Bag Fees

Owners of *supermarkets* and *pharmacies* shall pay an annual fee to the City of San Diego for the handling and recycling of their share of waste generated from the provision of *paper carryout bags*. Fees shall be paid in accordance with the schedule of fees filed in the Office of the City Clerk.

§54.0805 Violation and Penalties

Owners of *supermarkets* and *pharmacies* who violate any provision of this Division are guilty of an infraction and, upon conviction thereof, shall be punishable by fine only as follows: Upon a first conviction, by a fine of not exceeding one hundred dollars (\$100) and for a second conviction or any subsequent conviction within a period of one year, by a fine of not exceeding two hundred fifty dollars (\$250). The designated Enforcement Official may also seek injunctive relief in the Superior Court pursuant to Municipal Code section 12.0202.

Section 2. That a full reading of this ordinance is dispensed with prior to passage, since a written copy was made available to the City Council and the public prior to the day of its passage.

Section 3. This ordinance shall take effect and be in force on July 1, 2009.

Section 4. That the City Clerk is directed to file a Notice of Exemption regarding this ordinance with the Office of the San Diego County Clerk.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By _____
Nina M. Fain
Deputy City Attorney

NMF:mm
11/24/08
Or.Dept: Natural Resources and Culture Committee
O-2009-68
MMS No. 6970

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at its meeting of _____

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

ATTACHMENT "A": Letter from San Diego Coastkeeper

DRAFT

STRIKE OUT ORDINANCE

OLD LANGUAGE: ~~Struck Out~~

NEW LANGUAGE: Underline

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DIVISION 8

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It is the purpose of Division 8 to protect the public health, safety, and welfare of the citizens of San Diego by reducing single-use plastic and paper bags that would otherwise fill our landfills, litter the City's landscape and waterways, and endanger the health of humans, fish, and wildlife.

§54.0802 Definitions

Except as otherwise provided, for the purposes of this division:

"Paper carryout bag" means one that is provided to a customer by a supermarket or pharmacy at the point of sale and that meets all of the following requirements:

1) contains no old growth fiber; 2) contains a minimum of 40% post-consumer or 60% post-industrial recycled content; 3) is 100% recyclable; and 4) displays the

words “Reusable” and “Recyclable” in a highly visible manner on the outside of the bag.

“Plastic carryout bag” means a compostable or non-compostable plastic bag provided by a supermarket or pharmacy to a customer at the point of sale.

“Pharmacy” means a retail pharmacy with at least five locations under the same ownership within the City of San Diego.

“Reusable bag” means a bag with handles that is designed and manufactured for multiple reuse and that is either cloth or durable plastic (at least 2.25 millimeters thick).

“Supermarket” means a full-line, self-service retail establishment that sells a line of dry grocery, canned goods, or nonfood items and some perishable items and that generates gross annual sales of two million dollars or more. For the purposes of determining which retail establishments meet the definition of a supermarket, the Progressive Grocer Marketing Guidebook (as annually updated) and any associated printed materials shall be used as the basis for the determination.

§54.0803 Regulations on the Provision of Plastic and Paper Carryout Bags

- (a) Owners of supermarkets and pharmacies are prohibited from providing plastic carryout bags to any customer at the point of sale.
- (b) Owners of supermarkets and pharmacies shall provide or sell reusable bags and may provide or sell paper carryout bags to customers at the point of sale.

§54.0804 Paper Carryout Bag Fees

Owners of supermarkets and pharmacies shall pay an annual fee to the City of San Diego for the handling and recycling of their share of waste generated from

the provision of *paper carryout bags*. Fees shall be paid in accordance with the schedule of fees filed in the Office of the City Clerk.

§54.0805 **Violation and Penalties**

Owners of *supermarkets* and *pharmacies* who violate any provision of this Division are guilty of an infraction and, upon conviction thereof, shall be punishable by fine only as follows: Upon a first conviction, by a fine of not exceeding one hundred dollars (\$100) and for a second conviction or any subsequent conviction within a period of one year, by a fine of not exceeding two hundred fifty dollars (\$250). The designated Enforcement Official may also seek injunctive relief in the Superior Court pursuant to Municipal Code section 12.0202.

NMF:mm
11/24/08
Or.Dept: Natural Resources and Culture Committee
O-2009-68
MMS No. 6970

CITY ATTORNEY DIGEST

ORDINANCE NUMBER O-_____ (NEW SERIES)

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AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AMENDING CHAPTER 5, ARTICLE 4 OF THE SAN DIEGO MUNICIPAL CODE BY ADDING DIVISION 8 TITLED PLASTIC AND PAPER BAG REDUCTION AND BY ADDING SECTIONS 54.0801 THROUGH 54.0805 ALL RELATING TO PLASTIC AND PAPER BAG REDUCTION.

This ordinance changes the San Diego Municipal Code by prohibiting owners of certain supermarkets and pharmacies from providing plastic carryout bags to any customer at the point of sale. The ordinance also requires owners of certain supermarkets and pharmacies to provide reusable bags and to pay an annual fee to the City of San Diego for the handling and recycling of their share of waste generated from the provision of paper carryout bags.

More specifically, the ordinance applies to retail pharmacies with at least five locations under the same ownership within the City of San Diego and full line, self service supermarkets that sell a dry grocery, canned goods, or nonfood items and some perishable items and that generate gross annual sales of two million dollars or more.

The ordinance defines plastic carryout bag to mean a compostable or non-compostable plastic bag provided by a supermarket or pharmacy to a customer at the point of sale and defines reusable bag to mean a bag with handles that is designed and manufactured for multiple reuse and that is either cloth or durable plastic (at least 2.25 millimeters thick). Paper carryout bag is defined as a bag that: 1) contains no old growth fiber; 2) contains a minimum of 40% post-

consumer or 60% post-industrial recycled content; 3) is 100% recyclable; and 4) displays the words "Reusable" and "Recyclable" in a highly visible manner on the outside of the bag.

This ordinance specifies that violation of the ordinance would be considered an infraction.

This ordinance contains a notice that a full reading of this ordinance is dispensed with prior to passage, since a written copy will be made available to the City Council and the public prior to the day of its passage.

This ordinance shall take effect and be in force on July 1, 2009.

A complete copy of the Ordinance is available for inspection in the Office of the City Clerk of the City of San Diego, 2nd Floor, City Administration Building, 202 C Street, San Diego, CA 92101.

NMF:mm
11/24/08
Or.Dept: Natural Resources and Culture Committee
O-2009-68
MMS No.6970